

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 341 of 2006

Date of decision 15.12.2006

Bharat Bhushan Sood

...Appellant.

Versus

Tribhuwan Sood

...Respondent.

Coram

The Hon'ble Mr. Justice : Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: Mr. Ramakant Sharma, Advocate.

For respondent : Mr. H.R. Bhardwaj, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. There had been some litigation between the respondent and the appellant in which there was a compromise and in terms of that compromise, certain amounts of money, taken as crop loan by the appellant and his sister Neelam Kumari by creating charge on some joint property of the parties, were undertaken to be paid back by the appellant. Thereafter the plaintiff filed the suit, which has given rise to the present appeal,

Whether reporters of Local Papers may be allowed to see the Judgment?

.....

claiming that the appellant, who was impleaded as defendant, did not clear the loan account of his sister Neelam Kumari and that he had to pay a sum of Rs.29,300/- to clear the loan liability with a view to seeking the release of the joint property from the charge. He stated that the aforesaid amount of money was paid by him on 9.6.1997.

3. The defendant contested the suit and alleged that he had cleared the liability of his sister Neelam Kumari himself in the year 1995, when he deposited the amount of Rs.27850/-.

4. The trial Court decreed the suit after putting the parties to trial. The defendant went in appeal. The learned District Judge has held that the suit was not maintainable, because the remedy available to the respondent / plaintiff was to have approached the Court that passed the compromise decree in the earlier suit, for the execution of that decree, but at the same time dismissed the appeal, even though passing an order for the dismissal of the suit also.

5. Grievance of the appellant / defendant is that when the suit was held to be not maintainable, the appeal should have been dismissed. His further grievance is that the first Appellate Court should have clarified that though the respondent / plaintiff could approach the Court for the execution of the earlier compromise decree, yet it was for the executing Court to come to its own conclusion on the basis of the evidence and material which the parties were to place before it, whether the money due in the loan account of Neelam Kumari had already been paid by the appellant / defendant, when the respondent plaintiff claims to have deposited a sum of Rs.29,300/- in that account.

.....

6. After having heard the learned counsel for the parties and perusing the record, I am of the considered view that when the District Judge held that the suit was not maintainable and ordered its dismissal, he should have accepted the appeal. Consequently, the appeal is partly accepted and the decree and the operative part of the judgment of the first Appellate Court are modified to the extent that the order of dismissal of appeal is substituted by the order of acceptance of the appeal. As regards the second submission, I feel that it needs to be clarified that as and when the executing Court is approached by the respondent / plaintiff for the execution of the compromise decree, passed in the earlier suit, the executing Court shall come to its own conclusion whether any amount of money was due in the loan account of Neelam Kumari when the respondent / plaintiff claims to have deposited a sum of Rs.29,300/- in that account in June, 1997.

7. With the aforesaid observations and the direction for the modification of the decree of the first Appellate Court, the appeal is disposed of.

CMP. No. 622 of 2006

Since the main appeal stands disposed of, this application is dismissed as infructuous. Stay granted on 10.8.2006 is vacated.

December 15, 2006 (BC)

**(Surjit Singh)
Judge**